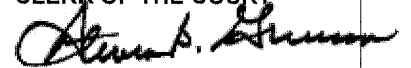


EXHIBIT “A”

EXHIBIT “A”

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Steven D. Grierson
CLERK OF THE COURT


COMP

THE COTTLE FIRM
Robert W. Cottle, Esq.
Nevada Bar No. 4576
rcottle@cottlefirm.com
Matthew G. Holland, Esq.
Nevada Bar No. 10370
mholland@cottlefirm.com
8635 South Eastern Avenue
Las Vegas, Nevada 89123
T: 702.722.6111 | F: 702.834.8555
Attorneys for Plaintiff

CASE NO: A-20-822882-C
Department 24

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARGARET LOVELOCK, an individual;

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a SMITH'S, a foreign corporation; DOE
SMITH'S FOOD & DRUG CENTERS,
INC.'S EMPLOYEES 1-10; DOE JANITORS
1-10; DOE MAINTAINERS 1-10; DOE
PROPERTY MANAGERS 1-10; ROE
JANITORIAL SERVICES 1-10; ROE
MAINTENANCE SERVICES 1-10; ROE
OWNERS 1-10; DOE INDIVIDUALS 1-10,
and ROE ENTITIES 1-10, inclusive,

Defendants.

Case Number:
Department Number:

COMPLAINT

Plaintiff MARGARET LOVELOCK, by and through her attorneys of record, ROBERT W. COTTLE, ESQ., and MATTHEW G. HOLLAND, ESQ., of THE COTTLE FIRM, complain against Defendants, and each of them, as follows:

PARTIES

1. Plaintiff MARGARET LOVELOCK (hereinafter "Plaintiff") was and is, and at all times mentioned herein, a resident of the County of Clark, State of Nevada.

2. That at all times relevant hereto, Defendants, and each of them, were incorporated

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8635 South Eastern Avenue, Las Vegas, Nevada 89123
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1 and/or licensed to conduct business in the state of Nevada.

2 3. That all the facts and circumstances that give rise to the subject lawsuit occurred in
3 Clark County, Nevada.

4 4. Upon information and belief, at all times relevant hereto, Smith's Food & Drug
5 Centers, Inc. dba Smith's, is a foreign corporation, domiciled in Delaware, doing business in Clark
6 County Nevada as Smith's Food & Drug ("Smith's").

7 5. DOE SMITH'S FOOD & DRUG CENTERS, INC. EMPLOYEES 1 through 10
8 are persons whose conduct gives rise to this Complaint; specifically those DOE OR ROE
9 Defendants are individuals who failed to supervise, control, repair, and maintain the premises, and
10 further failed to warn Plaintiff of hazards, which resulted in Plaintiff's injuries.

11 6. DOE AND ROE JANITORS 1-10 are persons whose conduct gives rise to this
12 Complaint; specifically, those DOE or ROE Defendants are individuals and/or entities who failed
13 to supervise, control, repair, and maintain the premises, and further failed to warn Plaintiffs of
14 hazards, which resulted in Plaintiff's injuries.

15 7. DOE and ROE MAINTAINERS 1-10 are persons whose conduct gives rise to this
16 Complaint; specifically, those DOE or ROE Defendants are individuals and/or entities who failed
17 to supervise, control, repair, and maintain the premises, and further failed to warn Plaintiff of
18 hazards, which resulted in Plaintiff's injuries.

19 8. DOE PROPERTY MANAGERS 1-10 are persons whose conduct gives rise to this
20 Complaint, specifically, those DOE OR ROE Defendants are individuals and/or entities who failed
21 to supervise, control, repair, and maintain the premises, and further failed to warn Plaintiff of
22 hazards, which resulted in Plaintiff's injuries.

23 9. DOE OWNERS 1-10 are persons whose conduct gives rise to this Complaint,
24 specifically, those DOE OR ROE Defendants are individuals and/or entities who failed to
25 supervise, control, repair, and maintain the premises, and further failed to warn Plaintiff of hazards,
26 which resulted in Plaintiff's injuries.
27
28

11. At all times mentioned, the Defendants were the designers, contractors, sub-contractors, vendors, maintainers, owners, managers, inspectors, supervisors and controllers of the premises and common areas generally known as 10616 S. Eastern Avenue, Suite 201, Las Vegas, Nevada 89052.

JURISDICTION AND VENUE

Page 3 of 9

1 14. The Eighth Judicial District Court possesses subject matter jurisdiction over this
2 matter because Clark County, Nevada is the judicial district where a substantial part of the events
3 or omissions giving rise to the claims set forth herein occurred.

4 15. Venue is proper in this district because the incident that is the subject matter of
5 this lawsuit occurred in Clark County, Nevada.

6 16. The amount in controversy exceeds \$15,000.00.

7
8 **GENERAL FACTUAL ALLEGATIONS**

9 17. On or about November 29, 2018, Plaintiff was an invitee at the Subject Premises
10 (“Subject Premises”) and was lawfully on the Defendant’s property (“Property”) located at 10616
11 S. Eastern Avenue, Suite 201, Las Vegas, Nevada 89052.

12 18. Defendants maintained and were in control of the Property located at 10616 S.
13 Eastern Avenue, Suite 201, Las Vegas, Nevada 89052.

14 19. Plaintiff was walking into the Subject Premises on a rainy day, when she passed
15 under a canopy that was set up outside of the entrance, and slipped and fell under the canopy,
16 causing injury to Plaintiff.

17 20. Upon information and belief, the subject condition, which was unattended and
18 without warning, was created by Defendants and/or was a condition of which Defendants had
19 actual or constructive notice prior to the Subject Incident.

20 21. Defendants knew, or reasonably should have known, that the Property contained a
21 dangerous condition, specifically a wet and/or slippery floor (“dangerous condition”).

22 22. Defendants failed to place signs, caution, warn, or otherwise make safe, the
23 dangerous condition existing on or about the Property.

24 23. Defendants should have warned or otherwise made safe the dangerous condition
25 because that condition was non-obvious to Plaintiff.

26 24. Defendants negligently, carelessly, and recklessly caused, maintained and/or
27 allowed the dangerous condition to exist.

28 25. As a direct and proximate result of the negligence of Defendants, Plaintiff sustained

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injuries to Plaintiff's shoulders, back, bodily limbs, organs and systems, all or some of which conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

26. As a direct and proximate result of the negligence of Defendants, Plaintiff received medical and other treatment for the aforementioned injuries, and that said services, care and treatment are continuing and shall continue in the future, all to the damage of Plaintiff.

27. As a direct and proximate result of the negligence of Defendants, Plaintiff has been required to, and has limited occupational and recreational activities, which have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

28. As a direct and proximate result of the aforementioned negligence of all Defendants, Plaintiff has been required to engage the services of an attorney, and has incurred, and is entitled to recover, attorney's fees and costs to bring this action.

FIRST CAUSE OF ACTION
(Negligence)

29. The Plaintiff repeats and incorporates each of the above paragraphs as if fully set forth herein.

30. At all times relevant hereto, Defendants were in control of the Subject Premises and had a duty to maintain and inspect the Subject Premises for the care, safety and protection of those persons present on said Premises, including the Plaintiff.

31. Defendants owed Plaintiff a duty of care to avoid creating a dangerous condition on their property, and to not expose Plaintiff to undue danger and unsafe conditions.

32. At all times mentioned herein, Defendants created and/or knew or should have known of the Subject Condition because the Subject Condition was in an area where it could be seen by employees, and/or it should have been discovered through the exercise of reasonable care.

33. Defendants owed Plaintiff a duty of care to remedy any dangerous condition on their property irrespective of the source of the dangerous condition.

34. Defendant owed Plaintiff a duty of care to warn her of the non-obvious and

1 dangerous condition.

2 35. Defendant breached this duty of care by maintaining a dangerous condition,
3 creating a dangerous condition, failing to remedy the dangerous condition and/or failing to place
4 caution signs, or otherwise failing to warn Plaintiff of the dangerous, non-obvious condition.

5 36. Defendant failed to take adequate steps to either remedy the dangerous condition,
6 or through its own negligence caused the dangerous condition to be present, thus causing damage
7 and injury to Plaintiff.

8 37. As a direct and proximate result of the hazardous condition, and Defendant's failure
9 to warn, Plaintiff MARGARET LOVELOCK, slipped and fell, and was seriously injured, which
10 caused injuries to Plaintiff's shoulders, back, bodily limbs, organs and systems, all or some of
11 which conditions are permanent and disabling, and all to her general damage in an amount in
12 excess of \$15,000.00.

13 38. That as a direct and proximate result of Defendants' negligence, Plaintiff has been
14 required to engage the services of an attorney, incurring attorney's fees and costs to bring this
15 action.

16 **SECOND CAUSE OF ACTION**
17 **(Negligence Per Se)**

18 39. The Plaintiff repeats and incorporates each of the above paragraphs as if fully set
19 forth herein.

20 40. The acts of Defendant SMITH'S FOOD & DRUG CENTERS, INC., as described
21 herein, violated the statutory laws of the State of Nevada and Clark County.

22 41. That Plaintiff, as a member of the general public, and a patron/resident/customer of
23 SMITH'S FOOD & DRUG CENTERS, was a member of the class of persons, which the statutory
24 laws of Clark County, and the State of Nevada, were intended to protect.

25 42. That, by violating Nevada and Clark County statutory law, Defendants caused
26 Plaintiff to suffer the exact type of harm that these statutes were intended to prevent.

27 43. That as a direct and proximate result of Defendants' statutory violations, Plaintiff
28

1 has been required to engage the services of an attorney, incurring attorney's fees and costs to bring
2 this action.

3 **THIRD CAUSE OF ACTION**
4 **(Negligent Hiring, Training, Retention and Supervision)**

5 44. The Plaintiff repeats and incorporates each of the above paragraphs as if fully set
6 forth herein.

7 45. Defendants owed a duty to Plaintiff to exercise due care in the selection, training,
8 oversight, direction, retention, and control of their employees/agents/contractors.

9 46. Defendants breached their duty to Plaintiff by failing to properly hire, retain, train,
10 staff, and supervise employees.

11 47. As a direct and proximate result of the acts or omissions of Defendants, Plaintiff
12 was required to obtain medical services and treatment and may, in the future, be required to obtain
13 additional medical services and treatment.

14 48. Plaintiff has sustained damages due to the negligence of Defendants in an amount
15 in excess of \$15,000.00.

16 49. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff
17 has had to retain the services of an attorney to pursue this action and is entitled to recover costs of
18 suit and reasonable attorney's fees incurred herein.

19 **FOURTH CAUSE OF ACTION**
20 **(Vicarious Liability of Employer/Principal)**

21 50. The Plaintiff repeats and incorporates each of the above paragraphs as if fully set
22 forth herein.

23 51. Upon information and belief, DOE SMITH'S FOOD & DRUG CENTERS, INC.'S
24 EMPLOYEES, DOE JANITORS 1-10, DOE MAINTAINERS 1-10, DOE PROPERTY
25 MANAGERS 1-10, and DOE INDIVIDUALS 1-10, were employees of Defendants.

26 52. Defendants and/or ROE JANITORIAL SERVICES 1-10, ROE MAINTENANCE
27 SERVICES 1-10, ROE OWNERS 1-10, and ROE ENTITIES 1-10 employers are liable for the
28 negligence of Defendant DOE SMITH'S FOOD & DRUG CENTERS, INC.'S EMPLOYEES,

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 Phone: (702) 722-6111 | Fax: (702) 834-8555

DOE JANITORS 1-10, DOE MAINTAINERS 1-10, DOE PROPERTY MANAGERS 1-10, and DOE INDIVIDUALS 1-10 because Defendant DOE SMITH'S FOOD & DRUG CENTERS, INC.'S EMPLOYEES, DOE JANITORS 1-10, DOE MAINTAINERS 1-10, DOE PROPERTY MANAGERS 1-10, and DOE INDIVIDUALS 1-10 were the employees and/or agents of Defendants and/or ROE JANITORIAL SERVICES 1-10, ROE MAINTENANCE SERVICES 1-10, ROE OWNERS 1-10, and ROE ENTITIES 1-10 Employers and were acting within the scope of that employment and/or agency at the time of the Subject Incident.

53. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff suffered physical injury as well as pain and suffering.

54. The acts or omissions of Defendants DOE SMITH'S FOOD & DRUG CENTERS, INC.'S EMPLOYEES, DOE JANITORS 1-10, DOE MAINTAINERS 1-10, DOE PROPERTY MANAGERS 1-10, and DOE INDIVIDUALS 1-10 were in conscious disregard for the rights and safety of others, with knowledge of the probable harm of those acts.

55. The acts or omissions of Defendants DOE SMITH'S FOOD & DRUG CENTERS, INC.'S EMPLOYEES, DOE JANITORS 1-10, DOE MAINTAINERS 1-10, DOE PROPERTY MANAGERS 1-10, and DOE INDIVIDUALS 1-10 were ratified by Defendants and/or ROE JANITORIAL SERVICES 1-10, ROE MAINTENANCE SERVICES 1-10, ROE OWNERS 1-10, and ROE ENTITIES 1-10 employers.

56. Defendants and ROE JANITORIAL SERVICES 1-10, ROE MAINTENANCE SERVICES 1-10, ROE OWNERS 1-10, and ROE ENTITIES 1-10 are liable to Plaintiff in an amount in excess of \$15,000.00.

57. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff has had to retain the services of an attorney to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff expressly reserves her right to amend this complaint prior to or at the time of trial of this action, to insert those items of damage not yet fully ascertainable, pray judgment against all Defendants, and each of them, as follows:

THE COTTLE FIRM
8635 South Eastern Avenue, Las Vegas, Nevada 89123
Phone: (702) 722-6111 | Fax: (702) 834-8555

1. For general damages sustained by Plaintiff in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
2. For special damages sustained by each Plaintiff in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
3. For reasonable attorney's fees and costs;
4. For lost wages and earning capacity;
5. For interest at the statutory rate; and
6. For such other relief as the Court deems just and proper.

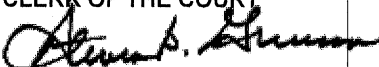
DATED this 13th day of October, 2020.

THE COTTLE FIRM

By 

ROBERT W. COTTLE, ESQ.
Nevada Bar No. 4576
MATTHEW G. HOLLAND, ESQ.
Nevada Bar No. 10370
8635 South Eastern Avenue
Las Vegas, Nevada 89123
(702) 722-6111
Attorneys for Plaintiff

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Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-20-822882-C
Department 24

DMJT
THE COTTLE FIRM
Robert W. Cottle, Esq.
Nevada Bar No. 4576
rcottle@cottlefirm.com
Matthew G. Holland, Esq.
Nevada Bar No. 10370
mholland@cottlefirm.com
8635 South Eastern Avenue
Las Vegas, Nevada 89123
T: 702.722.6111 | F: 702.834.8555
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARGARET LOVELOCK, an individual;

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a SMITH'S, a foreign corporation; DOE
SMITH'S FOOD & DRUG CENTERS,
INC.'S EMPLOYEES 1-10; DOE JANITORS
1-10; DOE MAINTAINERS 1-10; DOE
PROPERTY MANAGERS 1-10; ROE
JANITORIAL SERVICES 1-10; ROE
MAINTENANCE SERVICES 1-10; ROE
OWNERS 1-10; DOE INDIVIDUALS 1-10,
and ROE ENTITIES 1-10, inclusive,

Defendants.

Case Number:
Department Number:

DEMAND FOR JURY TRIAL

Plaintiff MARGARET LOVELOCK, by and through her attorneys of record, ROBERT
W. COTTLE, ESQ., and MATTHEW G. HOLLAND, ESQ., of THE COTTLE FIRM, hereby

...

...

...


...

...

1 demands a jury trial of all the issues in the above-entitled matter.

2 DATED this 13th day of October, 2020.

3 **THE COTTLE FIRM**

4
5 By 
6 ROBERT W. COTTLE, ESQ.
7 Nevada Bar No. 4576
8 MATTHEW G. HOLLAND, ESQ.
9 Nevada Bar No. 10370
10 8635 South Eastern Avenue
11 Las Vegas, Nevada 89123
12 (702) 722-6111
13 *Attorneys for Plaintiff*

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THE COTTLE FIRM
8635 South Eastern Avenue, Las Vegas, Nevada 89123
Phone: (702) 722-6111 | Fax: (702) 834-8555

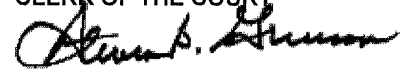
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SUMM

DISTRICT COURT

CLARK COUNTY, NEVADA

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11/10/2020 10:53 AM
Steven D. Grierson
CLERK OF THE COURT



MARGARET LOVELOCK, an individual;

CASE NO.: A-20-822882-C

Plaintiff,

DEPT NO.: 24

vs.

SUMMONS

SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a SMITH'S, a foreign corporation; DOE
SMITH'S FOOD & DRUG CENTERS,
INC.'S EMPLOYEES 1-10; DOE JANITORS
1-10; DOE MAINTAINERS 1-10; DOE
PROPERTY MANAGERS 1-10; ROE
JANITORIAL SERVICES 1-10; ROE
MAINTENANCE SERVICES 1-10; ROE
OWNERS 1-10; DOE INDIVIDUALS 1-10,
and ROE ENTITIES 1-10, inclusive,

Defendants.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD
UNLESS YOU RESPOND WITHIN 21 DAYS. READ THE INFORMATION BELOW.**

SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S

TO THE DEFENDANT: A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 21 days after this Summons is served on you exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:



ROBERT W. COTTLE, ESQ.
Nevada Bar No. 4576
MATTHEW G. HOLLAND, ESQ.
Nevada Bar No. 10370
THE COTTLE FIRM
8635 South Eastern Avenue
Las Vegas, NV 89123
Attorneys for Plaintiff

STEVEN D. GRIERSON, CLERK OF COURT



Deputy Clerk Date
Clark County Courthouse 10/14/2020
200 Lewis Avenue
Las Vegas, Nevada 89155

Patricia Azucena-Preza

1 STATE OF NEVADA)
 2)
 3 COUNTY OF CLARK)

ss.

AFFIDAVIT OF SERVICE

4 Jennifer Nicole Hernandez, being duly sworn says: That at all times herein affiant was and is a citizen of
 5 the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.
 6 That affiant received 1 copy(ies) of the Summons and Complaint on the 22nd day of October, 2020 and served the
 7 same on the 2nd day of November, 2020 by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the defendant _____ at

2. Serve the defendant _____ by personally delivering and leaving a copy with
 10 _____, as person of suitable age and discretion residing at the defendant's usual place of
 11 abode located at _____.
 (Confirmed with _____ Defendant lives at stated address.)

(Use paragraph 3 for serve upon agent, completing A or B)

3. Serving the defendant **Smith's Food & Drug Centers, Inc. d/b/a Smith's, a foreign corporation** by personally
 13 delivering and leaving a copy at **112 N. Curry St., Carson City, NV 89703 @ 12:45 PM.**

14 a. With _____ as _____, an agent
 15 lawfully designated by statute to accept service of process;

16 b. With **Corporation Service Company w/ Kris Osborne (Clerk)**, pursuant to NRS 14.020 as a person of
 17 suitable age and discretion at the above address, which address is the address of the resident agent as shown on the
 18 current certificate of designation filed with the Secretary of State.

4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage
 19 prepaid (check appropriate method):

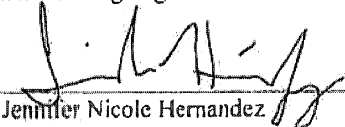
20 _____ ordinary mail
 21 _____ certified mail, return receipt requested
 _____ registered mail, return receipt requested

22 addressed to the defendant _____ at the defendant's last known address
 23 which is _____.

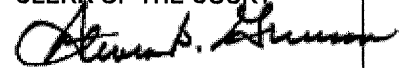
24 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

25 Executed on: 11/03/2020

26 No notary is required per NRS 53.045


 Jennifer Nicole Hernandez
 Registration# R-2020-09512
 KC Investigations, LLC
 1428 S. Jones Blvd.,
 Las Vegas, NV 89146
 License # 2086

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Steven D. Grierson
CLERK OF THE COURT



1 ANSC
JERRY S. BUSBY
2 Nevada Bar #001107
GREGORY A. KRAEMER
3 Nevada Bar #010911
COOPER LEVENSON, P.A.
4 3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
5 (702) 366-1125
FAX: (702) 366-1857
6 jbusby@cooperlevenson.com
gkraemer@cooperlevenson.com
7 Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 MARGARET LOVELOCK, an individual;
12 Plaintiff,

13 vs.

14 SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a SMITH'S, a foreign corporation; DOE
15 SMITH'S FOOD & DRUG CENTERS,
INC.'S EMPLOYEES 1-10; DOE JANITORS
16 1-10; DOE MAINTAINERS 1-10; DOE
PROPERTY MANAGERS 1-10; ROE
17 JANITORIAL SERVICES 1-10; ROE
MAINTENANCE SERVICES 1-10;
18 OWNERS 1-10; DOE INDIVIDUALS 1-10,
and ROE ENTITIES 1-10, inclusive,

19 Defendants.
20

CASE NO.: A-20-822882-C
DEPT. NO.: XXIV

**DEFENDANT SMITH'S FOOD & DRUG
CENTERS, INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT**

21 COMES NOW, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., by and through its
22 attorney of record, JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A., and hereby
23 answers Plaintiff's Complaint on file herein as follows:

24 **I.**

25 This answering Defendant states that it does not have sufficient knowledge or information upon
26 which to base a belief as to the truth of the allegations contained in Paragraphs 1, 3, 5, 6, 7, 8, 9, 10, 12,
27 16, 17 and 19 of Plaintiff's Complaint and upon said ground, denies each and every allegation contained
28 therein.

1 II.

2 In response to Paragraph 2 of Plaintiff's Complaint, this answering Defendant admits that it
3 is licensed to conduct business in the state of Nevada. This answering Defendant denies all
4 remaining allegations contained in said Paragraph.

5 III.

6 In response to Paragraph 4 of Plaintiff's Complaint, this answering Defendant admits that it
7 is a foreign corporation doing business in Clark County, Nevada as Smith's. This answering
8 Defendant denies any remaining allegations contained in said Paragraph.

9 IV.

10 In response to Paragraph 11 of Plaintiff's Complaint, this answering Defendant admits that it
11 owned and controlled the SMITH'S store located at 10616 S. Eastern Avenue, Suite 201, Las Vegas,
12 Nevada 89052. This answering Defendant denies any remaining allegations contained in said
13 Paragraph.

14 V.

15 Paragraphs 13, 14 and 15 of Plaintiff's Complaint state a legal conclusion which is the sole
16 province of the Court to determine. This answering Defendant therefore denies said Paragraphs.

17 VI.

18 In response to Paragraph 18 of Plaintiff's Complaint, this answering Defendant admits that it
19 owned and controlled the SMITH'S store located at 10616 S. Eastern Avenue, Suite 201, Las Vegas,
20 Nevada 89052. This answering Defendant denies any remaining allegations contained in said
21 Paragraph.

22 VII.

23 This answering Defendant denies each and every allegation contained in Paragraphs 20, 21, 22,
24 23, 24, 25, 26, 27 and 28 of Plaintiff's Complaint.

25 VIII.

26 This answering Defendant, in response to Paragraph 29 of that portion of Plaintiff's Complaint
27 entitled "**FIRST CAUSE OF ACTION (Negligence)**", incorporates herein by reference each and every
28 answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

IX.

In response to Paragraph 30 of Plaintiff's Complaint, this answering Defendant admits that it owned and controlled the SMITH'S store located at 10616 S. Eastern Avenue, Suite 201, Las Vegas, Nevada 89052. This answering Defendant denies any remaining allegations contained in said Paragraph.

X.

Paragraphs 31, 33 and 34 of that portion of Plaintiff's Complaint entitled "**FIRST CAUSE OF ACTION (Negligence)**" state a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraphs.

XI.

This answering Defendant denies each and every allegation contained in Paragraphs 32, 35, 36, 37 and 38 of that portion of Plaintiff's Complaint entitled "**FIRST CAUSE OF ACTION (Negligence)**".

XII.

This answering Defendant, in response to Paragraph 39 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Negligence Per Se)**", incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XIII.

Paragraphs 40, 41 and 42 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Negligence Per Se)**" state a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraphs.

XIV.

This answering Defendant denies each and every allegation contained in Paragraph 43 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Negligence Per Se)**".

XV.

This answering Defendant, in response to Paragraph 44 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring, Training, Retention and Supervision)**",

incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XVI.

Paragraph 45 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring, Training, Retention and Supervision)**" states a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraph.

XVII.

This answering Defendant denies each and every allegation contained in Paragraphs 46, 47, 48 and 49 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring, Training, Retention and Supervision)**".

XVIII.

This answering Defendant, in response to Paragraph 50 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION (Vicarious Liability of Employer/Principal)**", incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XIX.

This answering Defendant states that it does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 51 and 52 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION (Vicarious Liability of Employer/Principal)**" and upon said ground, denies each and every allegation contained therein.

XX.

This answering Defendant denies each and every allegation contained in Paragraphs 53, 54, 55 and 57 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION (Vicarious Liability of Employer/Principal)**".

XXI.

Paragraph 56 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION (Vicarious Liability of Employer/Principal)**" states a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff did not use reasonable diligence to care for her injuries, thereby aggravating said injuries as a result. Therefore, Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

SECOND AFFIRMATIVE DEFENSE

At the time and place alleged in Plaintiff's Complaint, and for a period of time prior thereto, Plaintiff did not exercise ordinary care, caution, or prudence for the protection of her own safety, and injuries and damages complained of by Plaintiff in the Complaint, if any, were directly and proximately caused or contributed to by the fault, failure to act, carelessness, and negligence of Plaintiff, and therefore Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of her Complaint on file herein; for costs and disbursements incurred in this action; and for such other and further relief as to the Court may deem proper.

Dated this 23rd day of November, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby

Jerry S. Busby
Nevada Bar No. 001107
Gregory A. Kraemer
Nevada Bar No. 010911
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89134
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

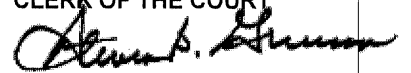
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A.
and that on this 23rd day of November, 2020, I did cause a true copy of the foregoing
DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT to be served upon each of the parties listed below via electronic service through the
Eighth Judicial District Court's Odyssey E-File and Serve System:

Robert W. Cottle, Esq.
THE COTTLE FIRM
8635 South Eastern Avenue
Las Vegas, NV 89123
Attorneys for Plaintiff

By /s/ Theresa H. Rutkowski
An Employee of
COOPER LEVENSON, P.A.

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Steven D. Grierson
CLERK OF THE COURT



1 **REFA**
2 THE COTTLE FIRM
3 Robert W. Cottle, Esq.
4 Nevada Bar No. 4576
5 rcottle@cottlefirm.com
6 Matthew G. Holland, Esq.
7 Nevada Bar No. 10370
8 mholland@cottlefirm.com
9 8635 South Eastern Avenue
10 Las Vegas, Nevada 89123
11 T: 702.722.6111 | F: 702.834.8555
12 *Attorneys for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

10 MARGARET LOVELOCK, an individual;

11 Plaintiff,

12 vs.

13 SMITH'S FOOD & DRUG CENTERS, INC.
14 d/b/a SMITH'S, a foreign corporation; DOE
15 SMITH'S FOOD & DRUG CENTERS,
16 INC.'S EMPLOYEES 1-10; DOE JANITORS
17 1-10; DOE MAINTAINERS 1-10; DOE
18 PROPERTY MANAGERS 1-10; ROE
19 JANITORIAL SERVICES 1-10; ROE
20 MAINTENANCE SERVICES 1-10; ROE
21 OWNERS 1-10; DOE INDIVIDUALS 1-10,
22 and ROE ENTITIES 1-10, inclusive,

23 Defendants.

Case Number: A-20-822882-C
Department Number: XXIV

**REQUEST FOR EXEMPTION
FROM ARBITRATION**

24 Plaintiff MARGARET LOVELOCK, by and through her attorneys of record, Robert W.
25 Cottle, Esq. and Matthew G. Holland, Esq. of The Cottle Firm, hereby requests the above-entitled
26 matter be exempted from arbitration pursuant to Nevada Arbitration Rules 3 and 5, as this case:

- 27 1. _____ presents a significant issue of public policy;
- 28 2. X involves an amount in excess of \$50,000, exclusive of
interest and costs;
3. _____ presents unusual circumstances which constitute good cause
for removal from the program.

///

THE COTTLE FIRM
8635 South Eastern Avenue, Las Vegas, Nevada 89123
Phone: (702) 722-6111 | Fax: (702) 834-8555

1 A summary of the facts, which support Plaintiff's contention for exemption from
2 arbitration are as follows:

3 This is a premises liability negligence action arising from personal injuries sustained by
4 the Plaintiff Margaret Lovelock as a result of a slip and fall incident due to the presence of a
5 dangerous and wet condition existing on the Defendant's premises on November 29, 2018.

6 Plaintiff, age 62, was walking into Smith's after parking her car. She proceeded to walk
7 through the pop-up canopy near the front of the stores entrance when she slipped and fell under
8 the canopy due to the wet ground, since it had been raining outside. There were no safety
9 precautions or warning signs for the wet ground placed outside the store entrance.

10 As a natural and proximate result of this incident she was required to undergo treatment
11 for her right elbow, right shoulder, neck and back pain. The extreme pain in her right shoulder led
12 to a right rotator cuff repair and extensive physical therapy. Past medical costs are estimated to
13 reach above \$100,000, as indicated in the summary included below.

14 With residual pain on the day of her slip and fall, Ms. Lovelock was initial treated on scene
15 by Henderson Fire Department, where they placed a c-collar on her neck for her pain and
16 transportation to St. Rose Dominican Hospital – Siena Campus. Ms. Lovelock upon arrival was
17 treated for her right elbow, right shoulder, neck and back. She had a x-ray of the elbow 3+ views,
18 a x-ray of the shoulder 2+ views, a CT of the cervical spine without contrast and a CT of the head
19 without contrast.

20 With her right elbow pain and right shoulder pain not subsiding, Ms. Lovelock presented
21 herself to Healthcare Partners of Nevada Medical Group on December 5, 2018, where she was
22 prescribed Tylenol for her pain and where she then thereafter had a MRI of the joint upper
23 extremity with Desert Radiologists on January 4, 2019. Ms. Lovelock was then referred to
24 Advanced Orthopedics and Sports Medicine due to the fact that she might have a partial right
25 shoulder tear, where she began treatment on January 18, 2019 with Dr. Timothy Trainor.

26 ///

27 ///

28 ///

THE COTTLE FIRM
8635 South Eastern Avenue, Las Vegas, Nevada 89123
Phone: (702) 722-6111 | Fax: (702) 834-8555

On January 18, 2019 Dr. Trainor order an x-ray of the cervical spine, x-ray of the right shoulder and a MRI of the right shoulder where Ms. Lovelock was diagnosed with an impingement syndrome of the right shoulder, adhesive capsulitis of the right shoulder, bicipital tendinitis/right shoulder, complete rotator cuff tear or rupture of the right shoulder, bursitis of the right shoulder and a unspecified rotator cuff tear or rupture of the right shoulder. Dr. Trainor recommended a right shoulder arthroscopy with arthroscopic rotator cuff tendon repair, right shoulder Mumford procedure and a right shoulder arthroscopy with arthroscopic lysis and adhesions. This procedure took place at Durango Surgery Center on March 7, 2019. Dr. Trainor then referred her out to ATI Physical Therapy for further recovery and treatment to her right shoulder.

Ms. Lovelock then presented herself to ATI Physical Therapy on April 29, 2019 where she then received treatment 3 times per week for 6 weeks up until November 22, 2019, which included therapeutic exercises and cold pack treatment on her right shoulder.

Even after her extensive physical therapy treatment, Ms. Lovelock still proceeds to have right shoulder pain and has had to reduce her daily physical activity pertaining to daily duties involving the right shoulder.

Nevertheless, exemption from the mandatory arbitration program is justified by the past medical expenses arising from the Plaintiff's one past surgical procedure as specified in the following table:

Provider	Dates of Service	Costs Incurred
Henderson Fire Department	11/29/2018	\$1,084.55
St. Rose Dominican Hospital – Siena Campus	11/29/2018	\$17,163.00
Vituity NV Koury Partners, PLLC	11/29/2018	\$1,203.00
Radiology Associates of Nevada	11/29/2018	\$450.00
Healthcare Partners of Nevada	12/15/2018 – 02/06/2019	\$1,035.00
Desert Radiologists	01/04/2019	\$117.00
Advanced Orthopedic and Sports Medicine	01/18/2019 – 02/04/2019	\$29,070.00
Quest Diagnostics (Labs for surgery)	02/07/2019	\$2,358.89
Durango Surgery Center	03/07/2019	\$46,675.00
ATI Physical Therapy	04/29/2019 – 11/22/2019	\$10,207.49
TOTAL		\$109,363.93

Because the Plaintiff has suffered personal injuries in excess of \$100,000, the threshold disputed amount of \$100,000 has been exceeded and the case may be exempted from arbitration.

1 I hereby certify pursuant to NAR 3 and 5 and NRCP 11 that this case falls within the
2 exemption as stated above and I am aware of the sanctions which may be imposed against any
3 attorney or party who, without good cause or justification, attempts to remove a case from the
4 arbitration program.

5
6 DATED this 10th day of December, 2020.

7 **THE COTTLE FIRM**

8
9 By /s/ Matthew G. Holland, Esq.

10 ROBERT W. COTTLE, ESQ.

11 Nevada Bar No. 4576

12 MATTHEW G. HOLLAND, ESQ.

13 Nevada Bar No. 10370

14 8635 South Eastern Avenue

15 Las Vegas, Nevada 89123

16 (702) 722-6111

17 *Attorneys for Plaintiff*

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THE COTTLE FIRM
8635 South Eastern Avenue, Las Vegas, Nevada 89123
Phone: (702) 722-6111 | Fax: (702) 834-8555

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure that on the 10th day of December, 2020, I served a true and correct copy of the above and foregoing, **PLAINTIFFS' REQUEST FOR EXEMPTION FROM ARBITRATION** on all those listed parties registered for service as follows:

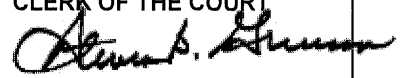
☒ Via **Electronic Filing Service (N.E.F.R 9)**

Jerry S. Busby, Esq.
Nevada Bar No. 001107
Gregory A. Kramer, Esq.
Nevada Bar No. 010911
COOPER LEVENSON, P.A.
3016 W. Charleston Blvd., #195
Las Vegas, NV 89102
(702) 366-1125
Attorneys for Defendants

Stacie Graham
Employee of The Cottle Firm

THE COTTLE FIRM
8635 South Eastern Avenue, Las Vegas, Nevada 89123
Phone: (702) 722-6111 | Fax: (702) 834-8555

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Steven D. Grierson
CLERK OF THE COURT



CDRG

DISTRICT COURT
CLARK COUNTY, NEVADA

Margaret Lovelock, Plaintiff(s)

vs.

CASE NO: A-20-822882-C
DEPT. NO: XXIV

Smith's Food & Drug Centers Inc,
Defendant(s)

COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION

REQUEST FOR EXEMPTION FILED ON: December 10, 2020

EXEMPTION FILED BY: Plaintiff OPPOSITION: No

DECISION

Having reviewed the Request for Exemption, and all related pleadings, the Request
for Exemption is hereby GRANTED.

DATED this 29th of December, 2020.



ADR COMMISSIONER

NOTICE

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Clerk of Court and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail. **Pursuant to NEFCR Rule 9(f)(2) an additional 3 days is not added to the time if served electronically (via e-service).**

A copy of the foregoing Commissioner's Decision on Request for Exemption was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program on the date of e-filing.

If indicated below, a copy of the foregoing Commissioner's Decision on Request for Exemption was also:

- ☐ Placed in the folder of counsel maintained in the Office of the Clerk of Court on _____, 2020.
- ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es) on.

/s/ Loretta Walker
ADR COMMISSIONER'S DESIGNEE